

Message Text

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STADIS////////////////////////////////////

ARA FOR DEPUTY ASSISTANT SECRETARY LUERS

E.O. 11652: GDS

TAGS: MASS, VE

SUBJECT: FMS CREDIT FOR VENEZUELA

REF CARACAS 7994

1. THE COMMANDER OF THE MILGRP HAS RECEIVED A MEMORANDUM FROM GENERAL RAFAEL AUGÉ GUILLEN, CHIEF OF THE JOINT STAFF OF THE VENEZUELAN ARMED FORCES, WHICH CAN BE SUMMARIZED AS FOLLOWS:

(A) THE FMS CREDIT PROGRAM WAS CARRIED OUT FROM THE BEGINNING WITH VENEZUELA THROUGH GOVT-TO-GOVT AGREEMENTS THAT PROVIDED FOR THE SETTLEMENT OF ANY DISPUTES THROUGH THE "PEACEFUL MEANS RECOGNIZED IN INTERNATIONAL LAW" (SIC).

(B) BECAUSE THE USG COULD NOT DIRECTLY SATISFY THE LEVEL OF REQUESTS FOR FOREIGN MILITARY CREDITS, THE SYSTEM WAS PROPOSED OF USING LOAN AGREEMENTS THROUGH THE FEDERAL FINANCING BANK, A DEPENDENCY OF THE TREASURY DEPT. THAT PROCEDURE HAS PROVED IMPOSSIBLE TO CARRY OUT BECAUSE ARTICLE 5 OF THE DRAFT AGREEMENT "IS UNACCEPTABLE FROM EVERY POINT OF VIEW AS BEING IN CONFLICT WITH ARTICLE 129 OF THE CONSTITUTION OF VENEZUELA."

(C) THE JOINT STAFF WOULD APPRECIATE BEING INFORMED AS TO WHETHER THE USG CONSIDERS IT FEASIBLE TO ELIMINATE THAT PARAGRAPH AND AGREE TO RESORT TO INTERNATIONAL TRIBUNALS

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OR, ALTERNATIVELY, TO RETURN TO THE SYSTEM IN EFFECT PRIOR

TO 1974 (I.E. STRAIGHT GOVT-TO-GOVT AGREEMENTS).
(D) THE JOINT STAFF WOULD BE GRATEFUL FOR A RESPONSE AT
AN EARLY DATE IN VIEW OF THE NEED TO COMPLETE LOGISTICS
PLANNING FOR THE YEAR AHEAD. (THE TEXT OF THE MEMO IS BEING
TRANSMITTED TO DOD BY THE MILGRP).

2. I CONSULTED PEDRO TINOCO INFORMALLY ON THE LEGAL PROBLEM AT
ISSUE. AS YOU KNOW, TINOCO IS A FORMER MINISTER OF FINANCE
AN EXPERIENCED BANKER AND ONE OF THE COUNTRY'S OUTSTANDING LAWYERS.
TINOCO SAID THAT GOV ENTITIES WITH INDEPENDENT LEGAL STATUS SUCH
AS THE CVG HAVE IN THE PAST SIGNED LOAN AGREEMENTS WITH LITIGATION
CLAUSES PROVIDING FOR VENUE IN OTHER COUNTRIES. BUT HE WAS QUITE
EMPHATIC IN STATING THAT NO DEPARTMENT OF THE GOV ITSELF COULD
DO SO CONSTITUTIONALLY OR "POLITICALLY". HE SUGGESTED THAT A
SOLUTION MIGHT BE A CLAUSE LISTING SEVERAL FORMULAS THAT THE PARTIES
COULD CHOOSE FROM AT THEIR DISCRETION IF A DISPUTE WERE TO ARISE.
THESE COULD INCLUDE THE NAMING OF A JOINT COMMITTEE TO REVIEW
THE MATTER, THE USE OF OUTSIDER ARBITERS, RESORT TO AN INTER-
NATIONAL TRIBUNAL AND THE LIKE. HE THOUGHT A LIST OF THIS KIND
WOULD ENSURE FLEXIBILITY AND, BY OFFERING VARIOUS OPTIONS, AFFORD
ADEQUATE PROTECTION FOR BOTH SIDES IN ANY CONCEIVABLE CASE. BUT
HE EMPHASIZED THAT THE LIST COULD NOT INCLUDE APPEAL TO THE
JURISDICTION OF A U.S. COURT.

3. WE HAVE A DILEMMA HERE. IF WE ARE TO ELIMINATE VENEZUELA
FROM THE FMS LIST, IT IS FAR BETTER TO DO SO ON THE BASIS OF THIS
NARROW LEGAL DISPUTE THAN IN RESPONSE TO A JUDGEMENT THAT VENEZUELA
NO LONGER QUALIFIES FOR MILITARY CREDITS. ON THE OTHER HAND, THE
CONTINUED PROVISION OF FMS IS IMPORTANT TO U.S. INTERESTS
HERE IN OUR JUDGEMENT. CLEARLY, A SOLUTION TO THE IMPASSE ON THE
VENUE QUESTION IS THE ESSENTIAL FIRST STEP TOWARD THAT OBJECTIVE.
YET, I DO WANT TO EMPHASIZE THAT THE WORST OF ALL WORLDS WOULD
BE TO REACH AN AGREEMENT ON ARTICLE 5 AND THEN HAVE TO
DENY FY '77 FMS CREDIT TO VENEZUELA BECAUSE OF AN ADVERSE
POLICY DECISION.
SHLAUDEMAM

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